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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,792	09/19/2003	Scott Thomas Mazar	279.B10US1	6737
21186 7590 01/25/2010 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER PAULS, JOHN A	
			ART UNIT 3686	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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request@slwip.com

Office Action Summary	Application No. 10/665,792	Applicant(s) MAZAR ET AL.	
	Examiner JOHN A. PAULS	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,13-31,33-42,44-54 and 56-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-10,13-31,33-42,44-54 and 56-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the communication filed on 17 December, 2009.
2. Claims 1, 33 - 42 and 44 - 46 have been amended.
3. Claims 2, 3, 11, 12, 32, 43, 55 and 61 have been cancelled.
4. Claims 1, 4 - 10, 13 - 31, 33 - 42, 44 - 54 and 56 - 60 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 17 December, 2009 has been entered.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1, 4 - 10, 13 - 31 and 33 are rejected under 35 U.S.C. 101 because they are directed to a system. However, the recited components of the system appear to lack the

necessary physical components (hardware) to constitute a machine or manufacture under § 101. Therefore, these claim limitations can be reasonably interpreted as computer program modules or software per se. The claims are directed to functional descriptive material per se and hence non-statutory. In particular, “*an information access portal*” may be reasonably interpreted to mean a librarian (or the door to a library); “*an interface to a patient management system/implantable medical device*” and “*a recognition module*” may be interpreted as software modules. Examiner suggests positively reciting the implantable medical device and the patient management system and claiming the recognition module in such a way that it is clearly a device not merely a software module.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 34 – 42, 44 – 54 and 56 – 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 34 recites the limitation “*automatically identified person*”. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1, 4, 13, 14, 16, 17, 26, 27, 30, 33 – 36, 44 – 46, 49, 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2) and in further view of Xydis (US 6,307,471 B1).

CLAIM 1

Nelson as shown discloses a health monitoring device and an analysis system and method and method with the following limitations:

- *an information access portal configured to convey patient health data and other information to an authorized, uniquely identified person;* (see at least Nelson column 5 line 30 – 41; column 8 line 27 – 36; column 11 line 47 – 53; column 12 line 47 – 53 and column 15 line 38 - 41);

- *the information access portal comprising: an interface to a patient management system configured to store patient health data and analyze patient health data; and an interface to an implantable medical device configured to sense and transmit patient health data;* (see at least Nelson column 5 line 49 – 53; column 5 line 63 to column 6 line 11; column 7 line 1 – 32 and column 8 line 27 - 36);
- *an implantable medical device comprising a proximity recognition system and a recognition module, separate from the implantable medical device, and configured to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device using the proximity recognition system, and authorize a person implanted with the implantable medical device access to the information access portal;* (see at least Nelson column 12 line 21 – 28; column 13 line 18 – 26; column 14 line 11 – 15; column 15 line 57 – 58 and column 16 line 5 - 11);

Nelson as shown discloses a system for communicating data between an IMD and a central computer which includes security systems including token-based and biometric security and provides access to the patient data upon authentication; including access to the data for the person implanted with the IMD. Nelson may or may not specifically disclose "*a proximity recognition system*" and "*a recognition module*". However, Xydis, in at least column 1 line 15 – 26 and line 40 – 50 and column 3 line 65 to column 4 line 3 discloses a token based proximity recognition system that includes a token (proximity recognition system) and an antenna array (recognition module) that detects the proximity of the token to the antenna and authorizes access to an electronic device if a predetermined signal strength threshold is met. Therefore, it would

have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring system of Nelson so as to have included proximity recognition, in accordance with the teaching of Xydis, in order to allow for secure access to a computer network, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIM 33

Nelson as shown discloses a health monitoring device and an analysis system and method and method with the following limitations:

- *an publicly accessible information access portal configured to convey patient health data and other information to an authorized, uniquely identified person in a multimedia presentation; (see at least Nelson column 5 line 30 – 41; column 8 line 27 – 36; column 9 line 32 – 38; column 10 line 57 – 62; column 11 line 47 – 53; column 12 line 47 – 53 and column 15 line 38 - 41);*
- *the publicly accessible information access portal comprising: an interface to a patient management system configured to store patient health data and analyze patient health data; and an interface to an implantable medical device configured to sense and transmit patient health data using at least one clinically derived procedure consistent with a standard of medical care; (see at least Nelson column 5 line 49 – 53; column 5 line 63 to column 6 line 11; column 7 line 1 – 32 and column 8 line 27 - 36);*

- *an implantable medical device comprising a proximity recognition system and a recognition module, separate from the implantable medical device, and configured to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device using the proximity recognition system, and authorize a person implanted with the implantable medical device access to the information access portal; (see at least Nelson column 12 line 21 – 28; column 13 line 18 – 26; column 14 line 11 – 15; column 15 line 57 – 58 and column 16 line 5 - 11);*

Nelson as shown discloses a system for communicating data between an IMD and a central computer which includes security systems including token-based and biometric security and provides access to the patient data upon authentication; including access to the data for the person implanted with the IMD. Nelson may or may not specifically disclose "*a proximity recognition system*" and "*a recognition module*". However, Xydis, in at least column 1 line 15 – 26 and line 40 – 50 and column 3 line 65 to column 4 line 3 discloses a token based proximity recognition system that includes a token (proximity recognition system) and an antenna array (recognition module) that detects the proximity of the token to the antenna and authorizes access to an electronic device if a predetermined signal strength threshold is met. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring system of Nelson so as to have included proximity recognition, in accordance with the teaching of Xydis, in order to allow for secure access to a computer network, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

The combination of Nelson/Xydis may or may not disclose conveying patient health data in a multimedia presentation; however, it is old and well known to display data in a multimedia format (see at least Leven US PG PUB 2004/0172290 A1 paragraph 0036 for example).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring system of Nelson/Xydis so as to have included multimedia presentations, in order to allow for the convenient display and comparison of health data, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIM 34

Nelson as shown discloses a health monitoring device and an analysis system and method with the following limitations:

- *detecting, at an electronic recognition module, a proximity recognition system in an implantable medical device implanted in the person; granting the person access to a publicly accessible information access portal when the electronic recognition module positively identifies the person as one with a right to access the publicly accessible information access portal; conveying information in the form of physiometric data to the identified person through the information access portal; (see at least Nelson column 12 line 21 – 28; column 13 line 18 – 26; column 14 line 11 – 15; column 15 line 57 – 58 and column 16 line 5 - 11);*

Nelson as shown discloses a system for communicating data between an IMD and a central computer which includes security systems including token-based and biometric security and

provides access to the patient data upon authentication; including access to the data for the person implanted with the IMD. Nelson may or may not specifically disclose "*a proximity recognition system*" and "*a recognition module*". However, Xydis, in at least column 1 line 15 – 26 and line 40 – 50 and column 3 line 65 to column 4 line 3 discloses a token based proximity recognition system that includes a token (proximity recognition system) and an antenna array (recognition module) that detects the proximity of the token to the antenna and authorizes access to an electronic device if a predetermined signal strength threshold is met. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring system of Nelson so as to have included proximity recognition, in accordance with the teaching of Xydis, in order to allow for secure access to a computer network, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding the limitation

- *conveying other information to the automatically identified person through the information access portal.*

The combination of Nelson/Xydis may or may not disclose conveying other information through the information access portal; however, Nelson in at least column 7 line 41 – 43 discloses that the network is the Internet. It is old and well known that access to a variety of information may be obtained over the Internet. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring system of Nelson/Xydis so as to have included conveying other information over the Internet, in order to

allow for the access to a variety of information, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIMS 4, 13, 16, 26, 27 and 30

The combination of Nelson Xydis as shown discloses the limitations shown above relative to Claim 1. Nelson also discloses the following limitations:

- *the patient management system is remote from the information access portal;* (see at least Nelson column 5 line 63 to column 6 line 11);
- *the information access portal conveys information;* (see at least Nelson column 5 line 30 - 41);
- *the information access portal conveys physiometric information;* (see at least Nelson column 6 line 26 - 32);
- *the information access portal comprises a home interface system;* (see at least Nelson column 9 line 32 – 38 and column 10 line 57 - 62);
- *the home interface system comprises a personal computing device;* (see at least Nelson column 15 line 57 - 58);
- *the information access portal comprises a publicly accessible terminal;* (see at least Nelson column 9 line 32 – 38 and column 10 line 57 - 62).

CLAIMS 5 – 10 and 37 - 42

The combination of Nelson/Xydis as shown discloses the limitations above relative to Claims 1 and 34 respectively. Nelson also discloses the following limitations:

- *the recognition module comprises a fingerprint recognition system;* (see at least Nelson column 13 line 10 - 15);
- *the recognition module comprises a voice recognition system;* (see at least Nelson column 13 line 10 - 15);
- *the recognition module comprises a facial- identification system;* (see at least Nelson column 13 line 10 - 15);
- *the recognition module comprises a retinal scan recognition system;* (see at least Nelson column 13 line 10 - 15).

Regarding the limitations of claims 6, 7, 38 and 39:

- *the recognition module comprises a security access card system;*
- *the recognition module comprises a bar code scanning system.*

Nelson discloses an identification system which includes fingerprints, and voice, facial and retinal recognition to establish a user's identification. It would be obvious to one of ordinary skill in the art at the time of the invention to include access card systems and bar code scanning systems which are well known security access systems to the other known systems disclosed in Nelson, in order to allow for the capability to positively identify a person would allow confidential information to be easily protected, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Examiner notes that the specification in the present application discloses that identifying a person is now possible through fingerprint, security access card, proximity, voice, facial and

retinal scans. (see Background pages 2 and 3). Such disclosure constitutes applicant's own admission of prior art.

CLAIMS 35, 36, 44 – 46, and 54

The combination of Nelson/Xydis as shown discloses the limitations shown above relative to Claim 34. Nelson also discloses the following limitations:

- *implanting an identifiable medical device within the person*; (see at least Nelson column 5 line 30 - 38);
- *allowing the person to enter information into the access portal*; (see at least Nelson column 8 line 48 - 50);
- *identifying a patient*; (see at least Nelson column 11 line 4 – 9; line 30 – 40 and line 60 – 62 and column 12 line 21 – 28 and line 47 - 53);
- *identifying a clinician*; (see at least Nelson column 12 line 21 – 28 and line 47 - 53);
- *identifying a person authorized to access the access portal*; (see at least Nelson column 12 line 21 – 28 and line 47 - 53);
- *comparing the physiometric data of the person to the physiometric data from a population of persons*; (see at least Nelson column 11 line 30 - 40).

13. Claims 14, 17, 49 and 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of Leven (US PGPUB 2004/0172290 A1).

CLAIMS 14, 17 and 49

The combination of Nelson/Xydis as shown discloses the limitations shown above relative to Claims 13, 16 and 34 respectively. Nelson/Xydis may or may not specifically disclose the following limitations; however, Leven does:

- *the conveyed information is conveyed in a multi-media presentation;* (see at least Leven paragraph 0036);
- *the physiometric information is conveyed in a multi-media presentation;* (see at least Leven paragraph 0036);
- *conveying physiometric data in a multi-media format;* (see at least Leven paragraph 0036).

Leven discloses a health monitoring system which includes conveying data in a voice or audio format. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the health monitoring device and analysis system of Nelson/Xydis so as to have included conveying data in a voice or audio format, in order to allow for a convenient display of data, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIM 53

The combination of Nelson/Xydis as shown discloses the limitations shown above relative to Claim 34. Nelson/Xydis may or may not specifically disclose the following limitations; however, Leven does:

- *conveying data comprising cardiovascular data, electro-chemical data, blood chemistry data, temperature data, oxygen saturation data, blood pressure data, EKG data or other physiological or psychological data;* (see at least Leven paragraph 0025).

Leven discloses a health monitoring system which includes the limitations shown above. Leven may or may not specifically disclose that the data includes “*wedge pressure data, weight data and subjective wellbeing data*”. However, Leven does disclose that additional sensors can be used. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the health monitoring device and analysis system of Nelson/Xydis so as to have included “*wedge pressure data, weight data and subjective wellbeing data*”, in order to allow for additional sensors to be monitored, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

14. Claims 21, 22, 24, 25, 28, 29, 31 and 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of Seigel et al. (US PG PUB 2001/0051879 A1).

CLAIMS 21, 22, 24, 25, 28, 29, 31 and 50

The combination of Nelson/Xydis as shown discloses the limitations shown above relative to Claims 1 and 34 respectively. Nelson/Xydis may or may not disclose the following limitations, however, Siegel does:

- *the information access portal conveys other information;* (see at least Seigel paragraph 0011);
- *the other information is conveyed in a multi-media presentation;* (see at least Seigel paragraph 0262);
- *the person can configure the other information;* (see at least Seigel paragraph 0014);
- *the other information comprises at least one of: a current event report, a stock price, a weather report, a sports report and an economic report;* (see at least Seigel paragraph 0083, 0098 and 0153);
- *the home interface system comprises a portable personal computing device;* (see at least Seigel paragraph 0016);
- *the information access portal comprises a kiosk;* (see at least Seigel paragraph 0016);
- *the access portal is publicly available;* (see at least Seigel paragraph 0060).

Seigel discloses an information distribution system which includes conveying a variety of information based on a user's identification. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis so as to have included conveying a variety of information based on a user's identification, in accordance with the teaching of Seigel, in order to allow for effective distribution of information based on a user's identification, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

15. Claims 19, 20, 47 and 48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of Kalgren et al. (US PGPUB 2002/10077562 A1).

CLAIMS 19, 20, 47 and 48

The combination of Nelson/Xydis as shown discloses the limitations above relative to Claims 1 and 34 respectively. Nelson/Xydis may or may not specifically disclose the following limitations, however, Kalgren does:

- *the physiometric information comprises static information;* (see at least Kalgren paragraph 0008);
- *the physiometric information comprises trended information;* (see at least Kalgren paragraph 0010 and 0058).

Kalgren discloses patient health information system which includes displaying static and trended information. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis so as to have included displaying static and trended information, in accordance with the teaching of Kalgren, in order to allow a physician to efficiently process large amounts of data and provides a variety of clinically useful functions with which to treat patients, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

16. Claims 15, 18 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in

further view of Leven (US PG PUB 2004/10172290 A1) and in further view of Seigel et al. (US PG PUB 2001/0051879 A1) and in further view of Konrad (US 5,544,320 A).

CLAIMS 15, 18 and 51

Nelson/Xydis/Leven as shown discloses the limitations shown above relative to Claims 14, 17 and 49 respectively. Nelson/Xydis/Leven may or may not specifically disclose the following limitations; however, Seigel does:

- *the multi-media presentation comprises audio, video and tactile presentations; (see at least Seigel paragraph 0071, 0150).*

Seigel discloses an information distribution system which includes multi-media presentations. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis/Leven so as to have included multi-media presentations, in accordance with the teaching of Seigel, in order to allow for the capability view health information in a variety of formats and to allow a user to customize the presentation in accordance with their needs, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

The combination of Nelson/Xydis/Leven/Seigel may or may not specifically disclose the following limitation, however, Konrad does:

- *tactical presentations; (see at least Konrad column 9 line 25 - 33 and column 13 Table 1 line 32 - 36).*

Konrad discloses an information distribution system which includes tactile presentations. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis/Leven/Seigel so as to have included tactile presentations, in accordance with the teaching of Konrad, in order to allow for the capability view health information in a variety of formats and to allow the capability to view health information in a tactile presentation so that visually impaired persons could access to this information, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

17. Claims 23 and 52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of Seigel et al. (US PG PUB 2001/0051879 A1) and in further view of Konrad (US 5,544,320 A).

CLAIMS 23 and 52

The combination of Nelson/Xydis/Seigel as shown discloses the limitations shown above relative to Claim 22 and 50 respectively. Additionally, Seigel discloses:

- *The multi-media presentation comprises audio, video and tactile presentations; (see at least Seigel paragraph 0071, 0150).*

Seigel discloses an information distribution system which includes multi-media presentations. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis

so as to have included multi-media presentations, in accordance with the teaching of Seigel, in order to allow for the capability view health information in a variety of formats and to allow a user to customize the presentation in accordance with their needs, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

The combination of Nelson/Xydis/Seigel may or may not specifically disclose the following limitation, however, Konrad does:

- *tactical presentations*; (see at least Konrad column 9 line 25 - 33 and column 13 Table 1 line 32 - 36).

Konrad discloses an information distribution system which includes tactile presentations.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Leven/Seigel so as to have included tactile presentations, in accordance with the teaching of Konrad, in order to allow for the capability view health information in a variety of formats and to allow the capability to view health information in a tactile presentation so that visually impaired persons could access to this information, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

18. Claim 60 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al.

(US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of

Seigel et al. (US PGPUB 2001/10051876 A1) and in further view of Treyz et al. (US 6,526,335 B1).

CLAIM 60

Nelson/Xydis as shown discloses the limitations shown above relative to Claim 34.

Nelson/Xydis may or may not specifically disclose the following limitation, however, Seigel does:

- *conveying data comprising reports of current events, weather, sports, and other information; (see at least Seigel paragraph 0083, 0098 and 0153).*

Seigel discloses an information distribution system which includes multi-media presentations.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis so as to have included multi-media presentations, in accordance with the teaching of Seigel, in order to allow for the capability view information in a variety of formats and to allow a user to customize the presentation in accordance with their needs, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

The combination of Nelson/Xydis/Seigel as shown discloses the limitations shown above. The combination of Nelson/Xydis/Seigel may or may not specifically disclose the following limitation, however, Treyz does:

- *stock prices, economic information; (see at least Treyz column 1 line 9 - 13).*

Treyz discloses a computer system which includes displaying stock prices and economic information. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the health monitoring device and an analysis system of Nelson/Xydis/Seigel so as to have included stock prices and economic information, in accordance with the teaching of Treyz, in order to allow for the capability view stock prices and economic information, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

19. Claims 56 - 59 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson et al. (US 6,654,104 B2 and in further view of Xydis (US 6,307,471 B1) and in further view of Iliff et al. (US 6,234,964 B1).

CLAIMS 56 - 59

The combination of Nelson/Xydis as shown discloses the limitations shown above relative to Claim 54. Nelson/Xydis may or may not specifically disclose the following limitation, however, Iliff does:

- *comparing the physiometric data of the person to the physiometric data from a population of persons with a health profile similar to the person;* (see at least Iliff column 2 line 49 - 56 and column 19 line 39 - 41 and line 61 - 67);
- *comparing the physiometric data of the person to the physiometric data from a population of persons, the population physiometric data being selected by the person;* (see at least Iliff column 5 line 49 - 67; column 11 line 17 - 25; and column 19 line 39 - 41 and line 61 - 67);

- *comparing the physiometric data of the person to the physiometric data from a population of persons, said population physiometric data being selected by a clinician;* (see at least Iliff column 5 line 49 - 67; column 6 line 6 - 13; column 11 line 17 - 25 and column 19 line 39 - 41 and line 61 - 67);
- *comparing the physiometric data of the person to the physiometric data from a population of persons, the population physiometric data being selected by another person so authorized to compare and select the data;* (see at least Iliff column 5 line 49 - 67; column 11 line 17 - 25 and column 19 line 39 - 41 and line 61 - 67).

Iliff discloses a disease management system which includes comparing data to a population of persons. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the health monitoring and analysis system of Nelson/Xydis so as to have included comparing data to a population of persons, in accordance with the teaching of Iliff, in order to allow a user to measure their condition against a reference and also to gain information about successful treatments, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Examiner notes that Leven discloses "reference models" which have the same meaning as "populations" in the present application.

The combination of Nelson/Xydis/Iliff may or may not specifically disclose that the population is selected by a physician; however, Iliff does disclose that the population may be selected by an assistant to the patient, and that the system is in communication with physicians. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the

health monitoring and analysis system of Nelson/Xydis/Iloff so as to have included a physician selecting the population, in order to allow a physician to measure a patient's condition against a reference and also to gain information about successful treatments, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Response to Arguments

Applicant's arguments filed on 17 December, 2009 have been fully considered but they are moot in view of the new grounds of rejection. Applicant's amendment dated 17 December, 2009 has necessitated new grounds of rejection as set forth above.

CONCLUSION

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John A. Pauls** whose telephone number is **(571) 270-5557**. The Examiner can normally be reached on Monday to Friday 7:30 to 5:00 4/5/9. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Jerry O'Connor** can be reached at **571.272.6787**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to

the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

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/J. A. P./

Examiner, Art Unit 3686

Date: 7 January, 2010

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686